

January 24, 2001

Lynne Saxton
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Environmental Law and Justice Clinic
School of Law
536 Mission Street
San Francisco, CA 94105-2968

Subject: Public Comment on Title V permit for Crown, Cork and Seal

Dear Ms. Saxton:

Thank you for your letter of November 17, 2000 commenting on the permit for Crown, Cork and Seal located in Antioch. Your letter concerns the permit's lack of a statement of compliance.

Federal law does not require a statement of compliance. Section 40 CFR 70.5(c), which you cite, contains requirements for the permit application, while Section 40 CFR 70.6 contains requirements for the permit content. The compliance requirements in Section 40 CFR 70.6(c) refer back to 40 CFR 70.5(c)(8), but only in regards to the "schedule of compliance." The schedule of compliance that is included in Crown, Cork, and Seal's permit meets EPA's requirements. This schedule of compliance requires the facility to continue to comply with current applicable requirements and to comply with applicable requirements that become effective during the permit term. The District uses this language for every facility that the District considers to be "in compliance" at the time that the Title V permit is issued. A schedule of compliance that contains provisions for sources that are not in compliance is only appropriate if the District knows that the facility is out of compliance at the time of permit issuance.

The District's Regulation 2, Rule 6, Major Facility Review, Section 409.9 requires a statement of compliance. We are currently amending portions of Regulation 2, Rule 6 and are proposing to delete this requirement. The reason is that statements of compliance are the responsibility of the facility and not of the District. The District's review of the current compliance status belongs in the permit evaluation, not in the permit.

The facility certifies compliance, or non-compliance, as the case may be, at the following times: 1) when the facility applies for a Title V permit, and 2) every year after the Title V permit is issued. Crown, Cork and Seal certified compliance on 12/17/98, when the responsible official signed the certification statement accompanying the application. After the permit is issued, the facility will certify compliance or non-compliance with each of the applicable requirements on a yearly basis.

You are correct in stating that the permit as proposed implies compliance. State law does not currently allow the District to issue a Title V permit to a non-complying facility if the facility does not have a variance or an order of abatement. If the facility were not in compliance, the schedule of compliance would contain a description of the non-compliance, and the contents of the variance or order of abatement, as well as added reporting requirements. Under such circumstances, the schedule of compliance would ensure that the facility would come into compliance by a date certain.

As part of its review of Crown, Cork, and Seal's permit application, the District has reviewed the compliance status of the facility. The compliance status portion of the permit evaluation, attached, states that "The facility has had no violations since it changed hands in June, 1996." The facility was also inspected in 1999 and 2000 and received no notices of violations. Furthermore, the incinerator at the facility was tested by our source test group in 1996, 1998, and 1999 and was found to be in compliance. Based on this review, the District has concluded that the facility is in compliance with the applicable requirements.

The permit also has provisions to ensure continued compliance. Standard Condition I.B.2 states:

"The permit holder shall comply with all conditions of this permit. The permit consists of this document and all appendices. Any non-compliance with the terms and conditions of this permit will constitute a violation of the law and will be grounds for enforcement action; permit termination, revocation and re-issuance, or modification; or denial of a permit renewal application."

Standard Condition I.F requires that the facility report any non-compliance within 10 days of discovery. A summary of all non-compliance must be submitted with the semi-annual monitoring reports. Standard Condition I.G requires the facility to certify annually whether the facility was in compliance with each applicable requirement. These reports are available to the public.

In summary, Federal law does not require a statement of compliance in the permit. Compliance certification is the responsibility of the facility. Furthermore, the District is not aware of any non-compliance at the present time.

However, the District does believe that it is reasonable for the District to review compliance for each facility and prepare a report containing appropriate observations regarding compliance at the time of initial Title V permit issuance. Accordingly, every proposed Title V permit placed on public comment after December 15, 2000 will be accompanied by a staff report containing an evaluation of the recent compliance history and current status. In general, these reports will review compliance activities and violation history at the facility during the year prior to initial issuance of the permit. These reports will be prepared for the initial issuance and all renewals.

You indicated that a statement concerning the facility's compliance at the time of permit issuance was necessary for public review of the proposed permit. We believe that the compliance discussion that we have added to the permit evaluation provides the information that you suggest. This discussion is more appropriately contained in the supporting documents than in the permit.

The District intends to issue the Title V permit to Crown, Cork and Seal soon. I will enclose a copy of your comment and this response in our submittal to EPA. Thank you for your constructive comments.

If you have any questions about this issue, please call me at (415) 749-4704.

Yours truly,

William deBoisblanc,
Director, Permit Services

Attachments

cc: Helen Kang, Golden Gate University
Amy Zimpfer, Environmental Protection Agency

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